

## **PROFESSIONAL SERVICES RETAINER AGREEMENT**

**THIS AGREEMENT** made this 15th day of May, 2020, by and between the CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA (the "City"), P.O. Box 4748, Clearwater, Florida 33758-4748, and the law firm of BRYANT MILLER OLIVE P.A., TALLAHASSEE, FLORIDA (the "Firm"), 101 North Monroe Street, Suite 900, Tallahassee, Florida 32301.

WITNESSETH:

**WHEREAS**, the City wishes to retain a law firm to serve as Bond Counsel to the City in connection with various bond issues and other matters for three (3) years; and

**NOW, THEREFORE**, in consideration of the promises and mutual covenants contained herein contained, the parties do hereby agree as follows:

**SECTION 1. AUTHORIZATION TO PROCEED AS BOND COUNSEL.** The Firm is hereby authorized to provide Bond Counsel services as described in this Agreement and for the professional fees described in this Agreement.

**SECTION 2. TERM.** This Agreement will be effective for three (3) years from the date of execution.

**SECTION 3. PROFESSIONAL SERVICES.** The Firm hereby agrees to provide its professional services and facilities in connection with all bond issuance and other debt activities of the City subject to the conditions and in consideration of the payment of fees set forth herein. The Firm, in its role as Bond Counsel, agrees, at the request of the City, to:

(A) Review proposed financing programs as to the legal feasibility, compliance with applicable law and pending or proposed revision to the law, including U.S. Treasury regulations.

(B) Advise as to structuring procedures, required approvals and filings, schedule of events for timely issuance, potential cost-saving techniques and other legal matters relative to issuance of the debt instrument(s).

(C) Attend meetings with City Staff and officials, the City's financial advisor, underwriters, rating agencies and others as appropriate for development or sale of bonds or dissemination of information in connection therewith.

(D) Prepare bond ordinances or resolutions and any amendments thereto in order to authorize the issuance of the bonds.

(E) Prepare any trust indenture; escrow deposit agreement; registrar or paying agent agreement; and any other agreements of similar documents necessary, related or incidental to the financing.

(F) Prepare all pleadings (e.g. complaint, notice of service, proposed answer, memorandum of law, proposed order, etc.) and, as requested by the City Attorney, assist in or conduct the validation hearing.

(G) Review the transcript of all proceedings in connection with the foregoing and indicate any necessary corrective action.

(H) If sale is by competitive bid, assist in preparation of the bid documents, notice of sale, evaluation of bids and any other documentation or action necessary to conduct a sale of the bonds in that manner.

(I) Review all disclosure documents prepared or authorized by the City insofar as such documents describe the bonds and summarize the underlying documents. However, the Bond Counsel assumes no responsibility for the disclosure documents insofar as such documents describe the financial circumstances of the offering or any other statistical projections or data and the Bond Counsel assumes no responsibility for preparing "Blue Sky Memorandums," registering obligations of the City in any State or for preparing legal investment surveys.

(J) Prepare, obtain, deliver and file all closing papers necessary in connection with the sale and issuance of the bonds, including, but not limited to, certified copies of all minutes, ordinances, resolutions and orders; certificates such as officers, seal, incumbency, signature, no prior pledge, arbitrage and others; and verifications, consents and opinions from accountants, engineers, special consultants and attorneys.

(K) Review all underwriting proposals, prepare all closing documents and attend and assist in the closing.

(L) Render an opinion in written form at the time the bonds are delivered, which opinion will cover (1) the legality of the bonds and the proceedings by which they are issued and (2) the exemption from gross income for federal income tax purposes of the interest paid on the bonds.

#### **SECTION 4. PROFESSIONAL FEES FOR PROFESSIONAL SERVICES.**

A. The City and the Firm agree to the following schedule of fees in connection with Bond Counsel representation:



	<u>Fixed Rate General Obligation Bonds*</u>	<u>Fixed Rate Revenue Bonds*</u>	<u>Variable Rate Revenue Bonds*</u>
First \$45,000,000	@\$1.00	@1.40	@1.50
\$45,000,000 and above	@\$.75	@0.90	@1.00

\*per \$1,000 principal amount

The minimum Bond Counsel fee for direct City issues is \$18,000 for publicly offered bond issues and \$20,000 for bank loans, and expenses would be reimbursed at actual out of pocket costs in accordance with the existing Bond Counsel services contract.

B. For conduit financings, the City agrees that the Bond Counsel shall be compensated for the above services at the time bonds are delivered according to the following schedule:

FIRST	\$5,000,000	@ \$5.00 per \$1,000
SECOND	5,000,000	3.00 per \$1,000
NEXT	10,000,000	2.00 per \$1,000
NEXT	10,000,000	1.70 per \$1,000
IN EXCESS OF	30,000,000	1.00 per \$1,000

The minimum fee for industrial development bonds and private activity bonds is \$30,000. Expenses will be capped at \$7,500 but subject to negotiation in unusual cases. The Bond Counsel understands that fees for conduit financings shall be paid by the obligor and not by the City.

C. Fees for Bond Counsel services will be the same for a negotiated or competitive sale.

**SECTION 5. ANCILLARY SERVICES.** In addition to being asked to perform typical Bond Counsel services in connection with various issues of the City as noted, above, the Firm agrees to provide certain ancillary services, such as ongoing consultation with the City on routine matters, i.e., phone conversations, short correspondence and simple advice on proposed or closed transactions without additional cost. Other services can be provided as Bond Counsel such as (but not limited to) bond validation proceedings, preparation of legislation, preparation of ruling requests to the Internal Revenue Service ("IRS") for rulings required in particular financing, assisting the City in responding to an audit request from the IRS, seeking no action letters from the Securities and Exchange Commission and post-issuance compliance services, at the request of the City shall be performed at an hourly rate based on the level of the attorney providing the services and the complexity of the matter involved. No such services will be undertaken without prior approval of the Finance Director and/or the City Attorney, as applicable, on the scope of the

requested legal services and the estimated costs of said services. The Firm will also provide, at the request of the City, professional services outside the customary scope of Bond Counsel services related to public finance matters including matters related, but not limited to, litigation, labor and employment law and general city attorney services at the governmental hourly rate based on the level of the attorney providing the services and the complexity of the matter involved. No such additional services will be undertaken without prior approval of the Finance Director and/or the City Attorney, as applicable, on the scope of the requested legal services and the estimated costs of said services.

**SECTION 6. COMPENSABLE EXPENSES.** Reimbursement of expenses shall be made by the City to the Firm for reasonable out-of-pocket expenses without markup including but not limited to long distance calls and facsimile transmissions, copying or reproducing documents, postage, court costs, parking costs and travel incurred by the Firm in performance of the duties hereunder. Travel and per diem costs as well as auto travel expenses shall not exceed that which is available to City of Clearwater employees.

**SECTION 7. INDEMNIFICATION AND INSURANCE.** The Firm agrees, through the provision of professional liability insurance and similar coverages, to protect, defend and indemnify the City and its officers, employees and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character caused by any negligent act or omission of the Firm, its employees, agents and subcontractors in connection with or arising directly or indirectly out of this Agreement and/or the performance hereof. Without limiting its liability under this Agreement, the Firm shall procure and maintain during the life of this Agreement professional liability insurance in an amount in excess of \$2,000,000. This provision shall survive the termination of this Agreement.

**SECTION 8. CONFLICT OF INTEREST.** It is understood by the City and the Firm that the Firm is not aware of any clients of the Firm that currently present any conflict between the interest of the City and other clients of the Firm. If any potential conflict of interest arises during the time the Firm is representing the City, the Firm will promptly inform the City. The City is under no obligation to agree to permit the conflict representation.

The rules regulating The Florida Bar provide that common representation of multiple parties is permissible where the clients are generally aligned in interest, even though there is some difference in interest among them. The Firm has disclosed to the City that the Firm has, currently does and may in the future, serve as bond or disclosure counsel to other local governments, act as underwriters' counsel and represent lending institutions on public finance matters inside and outside the State of Florida. From time to time, the Firm may represent financial institutions which may underwrite the City's bonds, notes or other obligations (and other financial institutions hired by the City) on financings for other governmental entities on unrelated matters. In all such cases, such representations are standard and customary within the industry and the Firm can effectively represent the City and the discharge of the Firm's professional responsibilities to the City will not be prejudiced as a result, either because such engagements



will be sufficiently different or because the potential for such prejudice is remote and minor and outweighed by consideration that it is unlikely that advice given to the other client will be relevant in any respect to the subject matter, and the City expressly consents to such other representations consistent with the circumstances herein described. The Firm's representation on unrelated matters is not likely to create or cause any actual conflict, and such service will not be per se construed as a conflict or be objectionable to the City.

The Firm understands that the City reserves the right to identify a representation that it finds objectionable in the future, in which case both parties agree to take appropriate steps to resolve the issue. Should any potential conflict arise in the future, the Firm would immediately disclose the facts to the City including the party with which there might be a conflict, the nature of the potential conflict, and the means of resolving such potential conflict, including but not limited to obtaining written conflict waivers from both parties and/or resignation of the representation or representations which is/are causing the conflict, if desired.

**SECTION 9. CONSTRUCTION AND AMENDMENTS.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement may be amended only by a writing duly entered into by the City and the Firm.

**SECTION 10. CANCELLATION OF AGREEMENT.** The City may cancel or terminate this Agreement upon thirty days advance written notice to the Firm. In the event of cancellation, the Firm shall immediately cease work hereunder and shall be reimbursed for eligible and documented reimbursable expenses incurred prior to the date of cancellation. Further, it is understood and agreed between the City and the Firm that Robert C. Reid and Monique Spotts will be the lead attorneys assigned by the Firm to provide the services contained herein. The City in its absolute discretion may immediately terminate this Agreement upon written notice to the Firm if the services of both of these attorneys are unavailable to the City.

*[Remainder of page left intentionally page – signature page follows]*

IN WITNESS WHEREOF, the City and the Firm have executed this Agreement as of the date first written above.

Countersigned:

CITY OF CLEARWATER, FLORIDA

\_\_\_\_\_  
William B. Horne, II  
City Manager

By: \_\_\_\_\_  
Frank V. Hibbard  
Mayor

Approved as to form and  
Legal sufficiency:

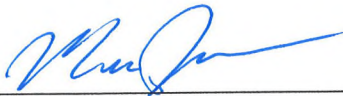
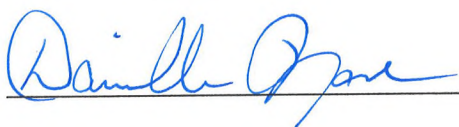
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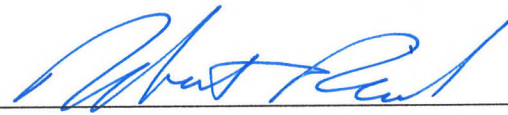
\_\_\_\_\_  
Pamela K. Akin  
City Attorney

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Rosemarie Call  
City Clerk

Witnesses:

BRYANT MILLER OLIVE P.A.

  
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Title: Shareholder